

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.24171 of 2008

and

M.P.No.1 of 2008

Dr.M.Baskaran

... Petitioner

Vs.

1. Sub Collector
Sub Collector Office
Hosur.

2. Commissioner
Municipality Office
Bye pass Road,
Hosur.

3. The Assistant Commissioner
HR & CE Department,
Dharmapuri.

... Respondents

(R3 implied as per order
dated 09.06.2010 made in M.P.No.1 of 2009 in WP 24171/08)

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from altering, dealing or disturbing the peaceful possession of lands pertaining to Survey No.692/2 and 690/2 Hosur Village.

For Petitioner : Mr.V.Balakrishnan

For R1 : Mr.R.S.Selvam
Government Advocate

For R2 : Mr.P.Sanjay Gandhi

For R3 : Mr.M.Maharajan
Special Government Pleader
(HR & CE)

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O R D E R

This Writ Petition has been filed, forbearing the respondents from altering, dealing or disturbing the peaceful possession of lands pertaining to Survey No.692/2 and 690/2 Hosur Village.

2. The petitioner would submit that he was running a Multi Specialty Hospital in the name and style of Surya Hospital at Hosur from the year 1992, and was serving to more than one lakh of people with least profit on service basis. While so, the petitioner had further constructed a building around Hosur and extended the hospital at his own cost for the welfare of the people.

3. The petitioner would further submit that he had purchased the lands situated in Survey No.692/2 to the total extent of 58 cents, by virtue of 4 registered sale deeds, bearing Documents Nos.6812/1996, 7026/1997, 5192/1997 and 1073/1998. In the western side of the petitioner's hospital property, land pertaining to Survey No.690/2 to the total extent of 18 cents, bearing Patta No.44 is situated and the said land belongs to Arulmigu Subramani Kovil, which was under the control of HR and CE and the same was governed by the HR and CE Department.

4. The petitioner would also submit that he had made a detailed representation to the HR & CE department in the year 1996 and sought permission to use the lands belonging to Arulmigu Subramani Kovil, for the purpose of path way leading to the hospital and he was also agreed to pay necessary fee for it. In response to the same, the HR & CE Department, Hosur, by its letter dated 29.09.1997, had recommended and communicated the same to the HR & CE Department, Dharmapuri, and later, fee was also fixed at Rs.56 per sq.ft. Thereafter, the petitioner had constructed 20 feet road leading to the hospital at his own cost and had started using the said land as pathway by paying necessary fees.

5. The petitioner would further submit that he had been utilizing the said land in Survey No.690/2 for about 11 years as pathway to the Hospital, while so, on 27.09.2008, the respondents herein, without giving notice or calling the petitioner, had marked the lands in Survey No.690/2 together with the petitioner's patta land in Survey No.692/2 to an extent of 10 feet and had tried to remove the road laid by the petitioner, hence, the petitioner and the general public had protested against them and stopped the work.

6. Furthermore, the petitioner would submit that when he had enquired about the said work from the labours of the respondents, he came to know that the respondents were going to put commercial complex in the land in Survey Nos.690/2 and 692/2, and let it for rent. Hence, the petitioner would submit that the respondents had marked 10 feet of petitioner's patta land to be encroached along with 18 cents which belongs to the HR & CE Department, which is against the principle of natural justice.

7. Moreover, the petitioner would submit that the respondents have no right over the property situated in Survey No.692/2 as it is the patta land of the petitioner, and the land pertaining to Survey No.690/2, is belonging to HR & CE Department. Hence, the act of the respondents, trying to take physical possession of the property without jurisdiction and without even sending any notice to the petitioner, is unlawful and highly condemnable.

8. In addition to the above, the petitioner would submit that the land in Survey No.692/2, is the path pay to the petitioner's hospital, if the respondents encroach the said property, a great irreparable loss will be caused to the petitioner. Hence, the petitioner, with no other alternative, has filed this Writ Petition to issue Writ of Mandamus, forbearing the respondents from altering, dealing or disturbing the peaceful possession of lands pertaining to Survey No.692/2 and 690/2 Hosur Village.

9. A counter has been filed by the 3rd respondent. It has been stated that the Assistant Commissioner, HR & CE Department, Dharmapuri, had filed an impleading petition in M.P.No.1 of 2009 to implead him as 3rd respondent. In the said petition, it has been stated that the land in S.No.690/2 to an extent of 0-07-5 Hectares in Hosur town in Patta No.44, is belonging to A/M.Subramaniasamy temple which is under the control of the Assistant Commissioner HR & CE Department, Dharmapuri, hence, who is the necessary party to be included in this Writ Petition.

10. The respondent would further contend that the revenue records in adangal also clearly shows that the land in Survey No.690/2 belongs to the A/M.Subramaniasamy temple, therefore, the Writ Petitioner herein, has no right in the suit property. The petitioner, taking advantage of the fact that the adjoining land in S.No.692/2 belongs to him, is trying to encroach the temple land in S.No.690/2 in Hosur Town, belonging to A/M.Subramaniasamy temple.

11. Furthermore, the respondent, namely, the Assistant Commissioner HR & CE Department, would contend that they have

power to deal with the property belongs to temple and the petitioner herein, is trying to grab the said land with ulterior motive, without impleading him as a necessary party in this Writ Petition.

12. On perusal of the records, it could be seen that when the petitioner herein had tried to encroach the property belongs to temple, a complaint was filed against him and the same was numbered as 463805 dated 23.02.2012. Thereafter, the said complaint was registered under land grabbing before the Superintendent of Police, Krishnagiri on 27.02.2008. In the meanwhile, the respondent had put fence around the property situated in S.No.690/2, Hosur Village, as it belongs to A/M.Subramaniasamy temple.

13. The learned counsel for the HR & CE Department would also contend that only to protect the land which belongs to temple, they are in possession of the same by putting fence around it and not with an intention to encroach the property.

14. The learned counsel for the petitioner would contend that he has already given representation to the temple authorities to lease out the land for the cost at Rs.56 per sq.ft and accordingly, he is ready to pay the necessary charges for the land.

15. The learned counsel for the petitioner would also contend that Municipality has laid down drainage in the said land, which is not connected to the present Writ Petition. The Government Pleader also would contend that only for the local people, the said drainage facilities have been done. This act of the Government is not against any public.

16. In view of the above stated facts, this Court is not inclined to consider the case of the petitioner and it is for the petitioner to seek remedy if he desire so, and no liberty is given to the petitioner. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

raja

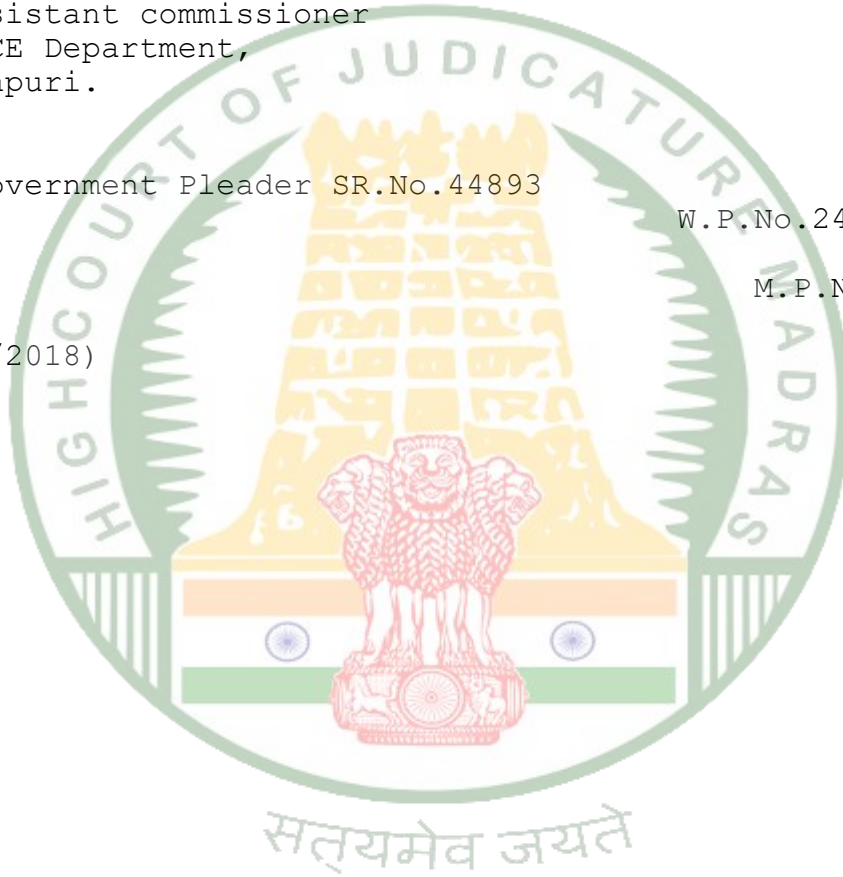
To

1. The Sub Collector
Sub Collector Office
Hosur.
2. The Commissioner
Municipality Office
Bye pass Road,
Hosur.
3. The Assistant commissioner
HR & CE Department,
Dharmapuri.

+1cc to Government Pleader SR.No.44893

W.P.No.24171 of 2008
and
M.P.No.1 of 2008

EV(CO)
GMY(27/12/2018)



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